

Fair Work Handbook

An employer's guide to the Fair Work Act

This handbook is for employers and managers, and is about workplace rights and responsibilities under the Fair Work Act 2009 (FW Act). You can use this handbook as a standalone resource, or you can add it to an existing workplace or operations handbook. As an employer or manager, you're responsible for giving your employees their correct entitlements. It's important you understand your rights and obligations.

Our role

The Fair Work Ombudsman helps employers and employees understand and follow Australian workplace laws. We do this by:

- providing information and education
- providing tools, templates and guides
- helping you resolve workplace issues.

All our services are free.

We have information available in 30 different languages to help you understand what your rights are when working in Australia.

Practical Tip – Free Online Learning Centre

We've developed easy-to-use, free and interactive short online courses to help businesses and managers achieve best practice and compliance with the FW Act. The courses are on topics including hiring employees, managing performance, and having difficult conversations in the workplace. You can complete these courses now at www.fairwork.gov.au/learning.

Register for My account at www.fairwork.gov.au/register to get personalised workplace information tailored to your industry and workplace. You're also able to:

- get help with workplace laws, including help sorting out workplace issues, and save our replies
- save results from our Pay, Shift, Leave, and Notice and Redundancy Calculators
- save your favourite website pages, including award summaries from Find my award
- subscribe to receive email updates and manage your subscription preferences.

Practical Tip – Check your knowledge with the Workplace Basics quiz

You can check your knowledge of workplace laws with the FWO's Workplace Basics quiz. The quiz will provide you with tailored feedback and resource links to brush up on any areas you need help with. You can access the quiz at www.fairwork.gov.au/basicsquiz.

Your industry or business association

Your industry or business association can provide you with tailored advice and assistance. You can find a list at www.fairwork.gov.au/registeredorgs.

Some associations, such as the Ai Group, www.aigroup.com.au, represent employers across a variety of industries. Alternatively, you can visit the Australian Chamber of Commerce and Industry's website at www.acci.asn.au/Our-Network for a list of industry specific organisations and state and territory chambers of commerce.

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Know the law

There are workplace laws that apply to all employees in the national workplace relations system.

The minimum entitlements are set out in the National Employment Standards and the award or agreement that applies to your business.

National Employment Standards

The National Employment Standards (NES) are 10 minimum employment entitlements that have to be provided to all employees.

The national minimum wage and the NES make up the minimum entitlements for employees in Australia. An award, employment contract, enterprise agreement or other registered agreement can't provide conditions that are less than the national minimum wage or the NES. They can't exclude the NES.

The 10 minimum entitlements of the NES are:

1. Maximum weekly hours of work – 38 hours per week, plus reasonable extra hours
2. Requests for flexible working arrangements – certain employees can request a change in their working arrangements
3. Parental Leave – up to 12 months unpaid leave as well as the right to request an additional 12 months leave
4. Annual leave – 4 weeks paid leave per year, plus an extra week for some shiftworkers
5. Personal/carer's leave (also known as sick and carer's leave), compassionate leave and family and domestic violence leave – 10 days per year paid personal/carer's leave (pro rata for part-time employees), 2 days unpaid carer's leave, 2 days compassionate leave as required and 5 days unpaid family and domestic violence leave (in a 12 month period)
6. Community service leave – unpaid leave for voluntary emergency management activities and leave for jury service (paid in some circumstances)
7. Long service leave – paid leave for employees who have been with the same employer for a long time. This may be under the NES or applicable state or territory law

8. Public holidays – a paid day off on a public holiday, unless reasonably requested to work
9. Notice of termination of employment and redundancy pay for some employees – up to 5 weeks notice of termination and up to 16 weeks of redundancy pay
10. Fair Work Information Statement (FWIS) – a document that must be provided to all new employees. Download the FWIS from www.fairwork.gov.au/fwis.

Casual employees only get NES entitlements relating to:

- accrued unpaid carer's leave
- unpaid compassionate leave
- community service leave
- the Fair Work Information Statement.

For more information about the NES visit www.fairwork.gov.au/nas.

Awards

An award is a document that sets out the minimum wages and conditions for a certain job (for example, the Clerks Award) or industry (for example, the Retail Award). They apply automatically unless your employees are covered by a registered agreement. Awards apply on top of the NES and can include information on:

- minimum wages, including annualised wage arrangements
- types of employment (for example, full-time, part-time or casual)
- extra amounts such as penalty rates, overtime and allowances
- work arrangements (for example, rostering or variations to working hours)
- annual leave loading and arrangements for taking leave
- superannuation
- procedures for consultation, representation and dispute settlement.

Awards may not apply to some managers or high income employees (who have an appropriate written guarantee of annual earnings). To work out which award applies to your business and how your employees should be classified go to www.fairwork.gov.au/awards-and-agreements/awards/find-my-award.

Agreements

A registered agreement is a document that sets out the terms and conditions that apply to a particular business or workplace. Like awards, agreements can have extra entitlements, but they can't provide for less than the NES. Agreements can benefit a business because they're tailored to a workplace's needs. The Fair Work Commission provides information on the process of making agreements, you can find out more at www.fwc.gov.au/awards-and-agreements/agreements.

Important – When a business changes hands

If you purchased an existing business, your employees may be covered by a registered agreement with their former employer under transfer of business rules. For more information, go to www.fairwork.gov.au/transferofbusiness.

Award and agreement free employees

Some employees aren't covered by an award or agreement. These employees are still covered by the NES and the National Minimum Wage. For more information go to www.fairwork.gov.au/awards-and-agreements/award-and-agreement-free-wages-and-conditions.

Employment contracts

An employment contract can be in writing or verbal. It's best practice to record your employee's terms and conditions when they're hired. This can be done in a letter of engagement or through a more formal contract.

A contract must provide the same or more generous conditions than the NES and any relevant award or agreement. A contract can't undercut an employee's minimum entitlements from the NES or any relevant award or agreement, even if they agree to it.

You can download template engagement letters from www.fairwork.gov.au/templates. You can use these templates to set your employees' expectations and confirm their conditions of employment.

Pay

An employee's minimum pay rate is set by the relevant award or agreement.

The pay rate in an agreement can't be less than the base pay rates in an award. Where there is no award, pay rates in a registered agreement can't be less than the national

minimum wage. This rule only applies to base pay rates, penalties, loadings and allowances still come from the agreement.

If an employee is not covered by an award or agreement, they're entitled to be paid at least the national minimum wage.

Practical Tip – Check pay rates with our pay calculator

Our Pay and Conditions Tool (PACT) available at www.fairwork.gov.au/pact calculates base pay rates, allowances and penalty rates (including overtime).

Every year, the Fair Work Commission reviews the national minimum wage and pay rates under awards. Any changes that are made begin on the first full pay period on or after 1 July.

An employee's minimum pay rate can depend on their:

- age (for example, junior employees may get different pay rates)
- job classification, duties, qualifications and level of responsibility
- type of employment (full-time, part-time, casual)
- hours and times of work (for example, working a weekend).

If any of these factors change, then your employee's pay rate may need to change.

Important – Review the salary

Where an employee is paid a salary under a contract, you need to make sure the amount covers all the employees' entitlements under the relevant award or agreement.

Leave

Employees take leave for many reasons, including to go on a holiday, because they are sick or to take care of sick family members.

Minimum leave entitlements for employees come from the NES. An award, agreement or contract of employment can provide for other leave entitlements but they can't be less than what's in the NES. For more information about the different types of leave visit www.fairwork.gov.au/leave.

Record-keeping and pay slips

Employee records

In any business, large or small, record-keeping is vital to success. Record-keeping and pay slip obligations ensure employees receive correct wages and entitlements and employers can show that they have paid employees correctly.

You need to keep detailed records for each employee about their employment, such as pay, hours of work, leave, superannuation and other matters.

These records must:

- be in a form that is readily accessible to a Fair Work Inspector
- be legible and in English
- be kept for seven years
- not be changed, except for the purposes of correcting an error
- not be false or misleading to the employer's knowledge.

Pay slips

Employees need to be issued a pay slip within one working day of being paid. Pay slips can be issued electronically or in hard copy.

Pay slips have to cover details of an employee's pay for each pay period. Below is a list of what to include:

- the employer's name and ABN
- the employee's name
- date of the payment and period the pay slip covers
- before and after tax amounts
- if paid hourly – the employee's hourly rate, the hours worked at that rate, and the total amount paid at that rate
- if paid a salary – the employee's salary rate
- loadings/allowances/bonuses/incentive payments/other separate monetary amounts
- any deductions
- super contributions made or required for that pay period and the fund name or name and number.

Practical Tip – Free course and templates

Our short, interactive Record-keeping and pay slips online learning course assists small businesses in understanding and meeting their record-keeping and pay slips obligations. The course is available at www.fairwork.gov.au/learning and provides links to our resources including pay slip and record-keeping templates at www.fairwork.gov.au/templates.

Hiring employees

Hiring a new employee is an important decision for your business. There are specialised resources to help you meet Australian laws when hiring. You can:

- use the Business.gov.au – Hiring employees checklist at www.business.gov.au/people/hiring/hiring-employees to make sure you get things right at the start
- complete our Hiring employees online learning course at www.fairwork.gov.au/learning for interactive activities, templates and checklists to help you through the process.

Important – Unpaid work trials

Unpaid work trials for any period beyond what is reasonably required to demonstrate the skills required for the job are unlawful. What's reasonable will vary depending on the nature and complexity of the work, but could range from an hour to one shift. For more information about unpaid trials and unpaid work, visit www.fairwork.gov.au/unpaidwork.

Independent Contractors

An independent contractor is someone who is self-employed and contracts their services to clients, such as other businesses. Independent contractors aren't employees and have different rights.

It's important to understand the difference between independent contractors and employees and to give them their correct entitlements. Just because a worker has an ABN or issues invoices doesn't automatically make them an independent contractor. Also, labelling people as independent contractors or getting them to sign contracts which state they are doesn't mean this either. There are a number of factors that need to be considered.

Misrepresenting or disguising what is actually an employment relationship, as an independent contracting arrangement, is known as 'sham contracting' and is against the law. Dismissing or threatening to dismiss an employee to engage them as an independent contractor is also against the law.

For information about independent contractors and how they differ from employees as well as more information on sham contracting visit www.fairwork.gov.au/contractors.

Important – Minimise your business risk when contracting labour

Your business may need to engage contractors from time to time. If you're contracting out work to another business, this can create a contracting network or supply chain. It makes business sense to manage your supply chain and use contractors who do the right thing and follow workplace laws. Download our Guide to contracting labour for small business at www.fairwork.gov.au/supplychain for practical steps to minimise your risk of hiring a non-compliant contractor.

Handling workplace issues

Often workplace issues arise because:

- employers and employees don't know what the law is
- communication has broken down.

If problems arise in the workplace it's important to take time to understand and discuss the issues with your employees. Most workplace issues can be resolved with the right tools.

		
Check the process	Discuss the issues	Put the agreed actions in writing
<ul style="list-style-type: none">• Most awards and agreements have a dispute resolution procedure• Some businesses also have formal or set processes for dealing with workplace issues	<ul style="list-style-type: none">• Prepare yourself for the conversation• Make time to talk to your employee without interruptions• Listen, keep an open mind and consider all points of view	<ul style="list-style-type: none">• It's a good idea to put things in writing• It's a good way to set out the issues or outline any courses of action that are agreed to

For further help you can:

- complete our Difficult conversations in the workplace online learning course at www.fairwork.gov.au/learning to give you the skills to have a difficult conversation in the workplace
- use our Effective Dispute Resolution Best Practice Guide which is available at www.fairwork.gov.au/bestpracticeguides for more detailed steps and tips.

Performance management

Knowing how to manage underperformance is important for every business. If it's not handled quickly, well and sensitively, it is likely to have consequences for you, your employee and the rest of the workplace.

Good employee management is linked to lower staff turnover, higher productivity and business success.

Effective managers know how to motivate and communicate with their employees. They also understand their legal obligations and promptly deal with any problems that arise in the workplace.

A simple way to help you get the best from your employees is to implement a performance system.



Practical Tip – Free specialised resources

We've developed resources to help you manage performance. Visit

www.fairwork.gov.au/employee-entitlements/managing-performance-and-warnings to access and download our:

- Managing performance online learning course to learn how to promote good employee performance and address underperformance
- Managing underperformance best practice guide for steps and practical tips
- templates to help manage performance.

Flexibility

Flexibility in the workplace allows employers and employees to make arrangements about working conditions that suit them. This helps employees maintain a work/life balance and can help employers improve the productivity and efficiency of their business.

As long as employees are still receiving their minimum entitlements, employers and employees can negotiate ways to make their workplace more flexible. Examples include changing what hours are worked and where work is performed.

There are two formal ways employers and employees can make their workplace more flexible:

- flexible working arrangements – certain employees have the right to request flexible working arrangements
- individual flexibility agreements – employers and employees can negotiate to change how certain terms in an award or agreement apply to them. Our Use of individual flexibility arrangements best practice guide provides further information about implementing these arrangements at www.fairwork.gov.au/bestpracticeguides.

Practical Tip – Online learning

More and more employers are making flexibility work for their business and their employees. Complete our Workplace flexibility online learning course at www.fairwork.gov.au/learning to find out more.

Ending employment

Termination of employment is when an employment relationship ends. This can happen for a number of reasons including redundancy, resignation or dismissal.

Notice of termination and redundancy

Full-time and part-time employees are entitled to notice of termination, or payment in lieu of notice. The notice needs to be given to them in writing.

The amount of notice depends on the employee's length of service and age. It is important to check the award, employment contract or agreement to see whether there are any conditions and if a longer notice period is required.

Period of continuous service	Notice period
1 year or less	1 week
More than 1 year to 3 years	2 weeks
More than 3 years to 5 years	3 weeks
More than 5 years	4 weeks

Employees who are over 45 and have worked for the business for at least two years get an extra week of notice.

Redundancy

Redundancy happens when an employee's employment is terminated because an employer either:

- doesn't need an employee's job to be done by anyone, or
- becomes insolvent or bankrupt

Redundancy can happen when the business:

- introduces new technology (for example, the job can be done by a machine)
- slows down due to lower sales or production
- closes down
- relocates interstate or overseas
- restructures or reorganises, such as where a merger or takeover happens.

When an employee's job is made redundant and their employment is terminated, their employer has to give them redundancy pay, also known as severance pay. The amount of redundancy pay depends on the employee's length of service and the relevant award or agreement. You should check the award or agreement to find out how much redundancy pay your employee is entitled to.

Redundancy pay doesn't need to be paid to some employees, including:

- employees who have worked for less than 12 months
- employees employed for a specific task, project, time period or season
- employees terminated because of serious misconduct
- casual employees
- apprentices
- trainees engaged only for the length of their training agreement
- some small businesses that have less than 15 employees.

For more information on redundancy visit www.fairwork.gov.au/redundancy.

Practical Tip – Calculator

Use our Notice and redundancy calculator at www.fairwork.gov.au/pact to find out how much notice and redundancy pay is required under the award or the NES.

Final pay

An employee should get the following entitlements in their final pay:

- outstanding wages for hours they have worked, including penalty rates and allowances
- any accumulated annual leave
- if it applies:
 - annual leave loading
 - accrued or pro rata long service leave
 - redundancy pay.

Sick and carer's leave is generally not paid out when employment ends.

Remember, employees need to be given a pay slip with their final pay.

Important – Deductions

You aren't automatically entitled to deduct money from an employee's final pay if they don't give notice or fail to return items (keys, uniforms, etc.). Deductions need to be properly authorised. For information about deductions, visit www.fairwork.gov.au/deductions.

Unfair dismissal

Unfair dismissal is when an employee is dismissed from their job in a harsh, unjust or unreasonable manner. The Fair Work Commission provides more information in their unfair dismissal guides available at www.fwc.gov.au/resources/fact-sheets-guides-videos.

Businesses with less than 15 employees should use the [Small Business Fair Dismissal Code and checklist](#) to make sure that a dismissal is fair. You can download a copy of the Small Business Fair Dismissal Code at www.fairwork.gov.au/unfairdismissal.

Protections at work

All employees have protected rights at work. These protected rights include:

- workplace rights
- taking or not taking part in industrial activities or belonging or not belonging to an industrial association
- being free from discrimination.

Workplace rights

A person has a workplace right if they:

- have a benefit, role or responsibility under a workplace law (for example, FW Act), instrument (for example, award or agreement) or an order made by an industrial body (for example, the Fair Work Commission)
- can start or take part in a process or proceeding under a workplace law or instrument
- can make a complaint or inquiry about their employment to a body
- are an employee and can make a complaint or inquiry about their employment.

Industrial activities

A person has the right to belong or not belong to an industrial association (for example, a trade union or employer association). A person also has the right to take part or not take part in industrial activity.

Discrimination

An employee or prospective employee has the right to be free from discrimination at work. Discrimination occurs in the workplace when an employer takes adverse action against an employee or prospective employee because of a protected attribute (this includes race, colour, sex, sexual orientation, age, physical or mental disability, family or carer's responsibilities and pregnancy).

Adverse action includes doing, threatening or organising any of the following:

- firing an employee
- injuring the employee in their employment (for example, not giving an employee legal entitlements such as pay or leave)
- changing an employee's job to their disadvantage
- treating an employee differently than others
- not hiring someone
- offering a potential employee different and unfair terms and conditions for the job compared to other employees.

For more information, download our Protections at work fact sheet at www.fairwork.gov.au/factsheets.

Practical Tip – Diversity

A diverse and inclusive workplace is good for business. It can help you boost productivity, reduce turnover and save money. It also minimises the risk of discrimination occurring.

Complete our Diversity and discrimination online learning course at www.fairwork.gov.au/learning to find out how to make your business a place where differences such as age, gender and race are genuinely valued. You'll also learn about preventing discrimination and how to appropriately handle complaints.

What to do if we contact you

We're responsible for promoting compliance with Australian workplace laws, and educating about rights and responsibilities at work. If we contact you, you should:

- work with us, including by providing documents and records if requested
- give us accurate information
- address any workplace issues we find.

Remember, we're here to help you. For more information about resolving workplace issues visit www.fairwork.gov.au/help.

The Fair Work Ombudsman is committed to providing you with advice that you can rely on. The information contained in this guide is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

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